**LIN TAH HWA**

**v.**

**PUBLIC PROSECUTOR**

HIGH COURT, SINGAPORE
P COOMARASWAMY J
[CRIMINAL MOTION NO. 30 OF 1986]
1 OCTOBER 1986

***CRIMINAL LAW AND PROCEDURE:*** *Charges of cheating before District Court - Under s. 417 read with s. 34 of the Penal Code - Application for case to be transferred and tried in the High Court - Criminal Procedure Code - Section 184(1)(b), (e) - On ground of "a question of law of unusual difficulty" - And on ground that a transfer to the High Court "is expedient for the ends of justice" - Whether application should be allowed.*

The applicant, Lin Tah Hwa, was on charges of cheating before a District Court. The charges were under s. 417 read with s. 34 of the Penal Code. Counsel for the applicant made application under s. 184(1) of the Criminal Procedure Code ("the Code") for the case to be transferred and tried in the High Court.

The applicant was the founder director of Lin Securities (Private), a company incorporated under the Companies Act and now subject to winding-up proceedings. Orders had been made in the winding-up proceedings for the determination of various issues arising out of certain documents described as "letters of hypothecation". These were executed by the company in favour of several banks and relate to shares listed in documents called "Daily Certificates". These same letters or some of them are also relevant in the criminal proceedings against the applicant.

Counsel for the applicant contended (under s. 184(1)(e) of the Code) that a transfer to the High Court "is expedient for the ends of justice". He argued that there was a likelihood of "grave danger and prejudice" as the District Court hearing his case will be influenced by any pronouncements of the High Court in the winding-up proceedings where the applicant is neither a party nor a person with a right to a hearing. Counsel further argued that the supreme needs of justice required that "the inconsistencies and multiplicities of findings" which are likely in view of the numerous applications involving differently-worded letters of hypothecation to different banks in the winding-up proceedings should be avoided and that this could only be avoided by a transfer to the High Court.

**Held:**

**[1]** If the dangers to which Counsel for the applicant referred were a real possibility, there was an equal likelihood of one High Court Judge being influenced by the decision of another High Court Judge. The fears that Counsel had, even if justified, would not be removed by a transfer of this case to the High Court.

**[2]** Therefore, the likelihood of similar issues arising out of identical or similar transactions or even the very same transactions in two different Courts, one dealing with a civil matter and the other with a criminal one, do not bring the case within the provisions of s. 184(1)(e) of the Code.

**[3]** On the issue (under s. 184(1)(b) of the Code) that the case involved the law on letters of hypothecation and the law of banking and securities, the points of law involved in "hypothecation" transactions were described as novel. In fact, they might well have been, but novelty in a point of law however does not by itself make that point "a question of law of unusual difficulty". If the material law governing the transaction, on banking and on securities, was relevant to the cheating charges, it was the task of the prosecution and of defence Counsel to place fully and comprehensively with appropriate citation from authorities, the law before the Court hearing the case. Therefore, the ground under para. (b) fails.

**[4]** For the provisions of s. 184(1)(b) of the Code to be successfully invoked today the case must be an extraordinarily rare one. Given the qualifications and experience of District Judges and the more senior Magistrates, the learned Judge was of the firm view that for all practical purposes and intent, para. (b) of s. 184(1) had fallen into desuetude and obsolescence for transfer of cases to the High Court.

*[Application dismissed.]*

**Cases referred to:**
*Magan Lal v. Ganesh Prasad [1918] AIR All 372*
*Pandurang Krishnaji Deotale v. Emp [1928] AIR Nagpur 23*
*Re Shriniwas Krishna Srivalkar [1905] 2 Crim LJR 582; [1905] 7 Bom LR 637*
*Botting v. Emp [1934] AIR Oudh 349*
*Measor v. Public Prosecutor [1972] 1 MLJ 195*
*Wong Hong Toy & Anor v. Public Prosecutor [1986] 2 MLJ 336*

**Legislation referred to:**
Criminal Procedure Code [Ind], ss. 211, 404, 441
Criminal Procedure Code [Sing], ss. 171(b), (c), 184(1), (1)(b), (c), (d), 410
Penal Code [Sing], ss. 34, 417, 415

*For the applicant - M.P.H. Rubin*
*For the respondent - Eleanor Wong Siew Yin, DPP*

**JUDGMENT**

**P Coomaraswamy J:**

The applicant, Lin Tah Hwa, is on charges of cheating before a District Court. The charges are under s. 417 read with s. 34 of the Penal Code.

Mr. Rubin, Counsel for Lin, makes application under s. 184(1), of the Criminal Procedure Code (CPC), 1980 Reprint, for the case to be transferred and tried in the High Court. He relies upon two paragraphs of that subsection. That subsection, so far as it is material for present purposes, reads:

> 184 (1) Whenever it is made to appear to the High Court that-
> ...
> (b) Some question of law of unusual difficulty is likely to arise; or
> ...
> (e) Such an order is expedient for the ends of justice....,
>
> it may order that-
> ...
> (ii) any particular criminal case shall be transferred to and tried before the High Court.

In an application of this nature with the substantive proceedings yet to come, it will be wrong for me to state facts beyond those absolutely necessary for the purposes of my decision. I therefore confine myself to such facts. The applicant is the founder director of Lin Securities (Private), a company incorporated under the Companies Act and now subject to winding-up proceedings in Companies Winding-up No. 183 of 1986.

Orders have been made in the winding-up proceedings for the determination of various issues arising out of certain documents described as "letters of hypothecation". These were executed by the company in favour of several banks and relate to shares listed in documents called "Daily Certificates". These same letters or some of them are also relevant in the criminal proceedings against the applicant.

I will deal first with Mr. Rubin's contentions under s. 184(1)(e), i.e., that a transfer to the High Court "is expedient for the ends of justice". He argues that there is a likelihood of "grave danger and prejudice" as the District Court hearing his case will be influenced by any pronouncements of the High Court in the winding-up proceedings where the applicant is neither a party nor a person with a right to a hearing.

He further argues that the supreme needs of justice require that "the inconsistencies and multiplicities of findings" which are likely in view of the numerous applications involving differently-worded letters of hypothecation to different banks in the winding-up proceedings should be avoided and that this can only be avoided by a transfer to the High Court.

To my mind, if the dangers to which Mr. Rubin refers are a real possibility, there is an equal likelihood of one High Court Judge being influenced by the decision of another High Court Judge. The fears that Mr. Rubin has, even if justified, will not be removed by a transfer of this case to the High Court.

In my view, therefore, the likelihood of similar issues arising out of identical or similar transactions or even the very same transactions in two different Courts, one dealing with a civil matter and the other with a criminal one, do not bring the case within the provisions of s. 184(1)(e).

I now turn to s. 184(1)(b). The elements in the charge of cheating are set out in the Penal Code, s. 415. They are elements that have frequently been dealt with by the Subordinate Courts.

Under para. (b), the only issue on which the application was urged before me is that the case involves the law on letter of hypothecation and the law of banking and securities. The points of law involved in "hypothecation" transactions were described as novel; in fact, they may well be. Novelty in a point of law of however does not by itself make that point "a question of law of unusual difficulty". If the material law governing the transaction, on banking and on securities, is relevant to the cheating charges, it is the task of the prosecution and of defence Counsel to place fully and comprehensively with appropriate citation from authorities, the law before the Court hearing the case. In my view, therefore, the ground under para. (b) fails.

In this context, it is pertinent to look at the history of s. 184. Until 1900 there was no comprehensive code for criminal procedure in force in Singapore and the other territories, then comprising the Straits Settlements. The law relating to criminal procedure was to be found in at least six ordinances enacted between 1870 and 1892. The 1892 enactment was a comprehensive code but it was never brought into force.

In 1900, the Straits Settlements had its first comprehensive Criminal Procedure Code. It drew heavily on the Indian Criminal Procedure Code of 1898. Our present s. 184 is, with some immaterial changes, s. 410 of the 1900 Code. That in turn came from s. 441 of the Indian 1898 Code. In the present Indian Code, it is s. 404. For the purposes of the application before me, there are no material differences.

At the turn of the century and for many years before and even after, Singapore and the predecessor Straits Settlements as well as India had persons not professionally qualified sitting in the subordinate Courts.

In the Straits Settlements, many of these non-professional judicial officers were also administrative officers. Some of them had passed Government examinations in law but these examinations were largely confined to the law encountered by people like Assistant District Officers in the course of their administrative, land office, law and order and "police magistrate" work.

The position in India, while not dissimilar in this respect, went even further. Well into the thirties and even later, many parts of India had unofficial or honorary lay Magistrates, some of whom had no knowledge of English. An examination of the Indian cases under para. (b) shows that where application was successfully made, it was almost in every case an application for transfer of a case from the Court of a lay (or of one stipendiary) Magistrate to that of a (or of another) stipendiary Magistrate or to a more superior Court, but one still subordinate to the High Court.

In *Magan Lal v. Ganesh Prasad* [1918] AIR All 372, the case was originally fixed for hearing before a lay Honorary Magistrate who did not know the English language. The applicant complained that, amongst other things, he had to file translations of judgments from the English language into Urdu. The charge was under s. 211 of the Indian Penal Code, the offence having the same section number under our Code.

Mr. Justice Knox in allowing the application said, at p. 373, that the case "ought to be tried either by a Court of Session or at any rate by a Magistrate of considerable experience, and it is not a case of the kind that should have been sent for trial to an Honorary Magistrate who does not appear to have had much experience in the trial of criminal cases".

In *Pandurang Krishnaji Deotale v. Emp* [1928] AIR Nagpur 23, Finlay JC said:

> While I value the services of Honorary Magistrates highly, there can be no gainsaying the fact that cases, which are likely to be keenly contested and intricate in nature, are, on the whole, likely to be more efficiently disposed of by stipendiary Magistrates than by Honorary Magistrates, or at least the accused persons concerned well believe this to be the case.

In each of these two cases, there were other grounds under other paragraphs of s. 441(1) (now, 404(1)) which the respective Judges took into account before allowing the applications. What is important to note is that each transfer was a transfer from the Court of an Honorary Magistrate, not legally qualified, to that of the District Magistrate or a First Class Magistrate and not to the High Court.

Mr. Rubin cited two Indian cases, *Re Shriniwas Krishna Srivalkar* [1905] 2 Crim. LJR 582; [1905] 7 Bom. LR 637 and *Botting v. Emp* [1934] AIR Oudh 349. They again were not cases of transfer from a subordinate Court to the High Court. In both, the transfer was from a Magistrate's Court to a Court of Session. This is a Court superior to that of a Magistrate but subordinate to the High Court. In the first, the transfer was because questions of law of unusual difficulty might arise.

In the *Botting* case, proceedings before a Magistrate had begun and the High Court said there was little doubt in its mind that "the attitude taken up by the learned Magistrate was not conducive to justice to the accused". A further distinguishing feature was that the case was likely "to embrace within it charges for offences exclusively triable by a Court of Session".

In each of these four Indian cases, the High Court was acting under the Indian provision which is identical to that part of s. 184(1) which gives the High Court a discretion to order the transfer of a case "from a criminal Court subordinate to its authority to any other such criminal Court of equal or superior jurisdiction".

I now turn to the Singapore decisions. In the unreported case of *Attorney-General v. Koh Cho Puan & Ors.* (Criminal Motion No. 10 of 1966), the accused/respondents were due to go for trial in the Subordinate Courts on charges of cheating, attempted cheating and conspiracy to cheat. The amount involved was $1 million. There were to be a score of witnesses or more and the documents were voluminous.

In this case, it was the Attorney-General who applied under para. (b) and (e) of the then s. 176(1) (now, 184(1)), CPC, for transfer of the case to the High Court. The justification advanced on his behalf under para. (b) was that the law involved was complex as it related to banking and shipping. I have set out the points advanced for the Attorney-General under para. (e) at the end of the immediately preceding paragraph.

Mr. Justice Winslow refused the application and on para. (b) observed that the case did not "render it beyond the competence of the Courts already entrusted by the legislature with the task of hearing trials of accused persons charged with cheating and allied offences".

Mr. Justice Choor Singh in *Measor v. Public Prosecutor* [1972] 1 MLJ 195 used the historical change in the professional qualification of the presiding officers of the Subordinate Courts as a ground for dismissing an application under para. (b). He also added that with an accused's right of appeal to the High Court and the High Court's own powers of revision, the High Court should "be loathe to transfer a case from a subordinate Court on the ground that difficult questions of law are likely to arise".

The question has earlier this year come before the Court of Criminal Appeal in *Wong Hong Toy & Anor. v. Public Prosecutor* [1986] 2 MLJ at p. 336. The appellants' application for transfer of their cases from the District Court to the High Court was rejected by the High Court. They appealed.

Dismissing the appeal, the Court said, with reference to s. 184(1)(b):

> After the Criminal Procedure Code was first enacted many judicial officers holding office in the subordinate Courts were persons without legal qualifications, though they were persons of standing in the public services. In Singapore, however, for more than 25 years every judicial officer holding office in the subordinate Courts has been a 'qualified person' under the Legal Profession Act.
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> Therefore, para. (b) has lost much of its practical importance. Judicial officers of Courts subordinate to the High Court have gained vast experience in respect of cases similar to, if not more complicated than, those with which the [applicants] had been concerned. District Judges are qualified persons of several years' standing ...

In the light of the decisions I have referred to, for the provisions of s. 184(1)(b) to be successfully invoked today the case must be an extraordinarily rare one and I find it extremely difficult to think of one. For the historical reasons I have stated, and, given the qualifications and experience of District Judges and the more senior Magistrates, I am of the firm view that

for all practical purposes and intent, para. (b) of s. 184(1) has fallen into desuetude and obsolescence for transfer of cases to the High Court. Having regard to Singapore's size and comparing Singapore to the geographically separate and dispersed territories that once constituted the Straits Settlements, the same may well be true for all cases, whether for transfer to the High Court or from one subordinate Court to another, of para. (c) and (d) of s. 184(1).

For the reasons given, the application is dismissed.

Also found at [1987] 1 CLJ 95